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ABSTRACT

Noting that Lawrence Kohlberg has written extensively in the fields of education and psychology regarding moral development in adolescents and adults, this paper argues that Kohlberg's approach offers a viable addition to levels of understanding of rhetorical discourse. The paper first offers a discussion of the Kohlbergian theory of moral development, with brief explications of each stage of moral development. It then applies this theory to selected United States Supreme Court opinions dealing with the First Amendment to the Consitution and specifically with the issue of obscenity. The approach of the paper is premised on the observation by Kohlberg that the Consitution and the Supreme Court interpretations of it represent the "social contract" stage--a high stage of moral reasoning. The paper also presents the findings of a pilot study undertaken to test this assertion and reports that of 98 Supreme Court decisions studied, approximately 60% were at the stage Kohlberg had predicted. The paper concludes with suggestions for other areas for investigation using Kohlbergian analysis. (FL)

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A KOHLBERGIAN ANALYSIS OF SELECTED FIRST AMENDMENT SUPREME COURT DECISIONS

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A KOHLBERGIAN ANALYSIS OF SELECTED FIRST AMENDMENT SUPREME COURT DECISIONS

Communication scholars over the years have applied many critical paradigms in a search for a more complete rhetorical analysis of a variety of documents. Lawrence Kohlberg[1] has written extensively in the fields of education and psychology regarding moral development in adolescents and adults. We believe Kohlberg's approach offers a viable addition to levels of understanding of rhetorical discourse.

June L Tapp and Lawrence Kohlberg provide a rationale for this paper when they write: "The two most important institutions for stimulating just legal development are the public school and the legal system."[2] As teachers interested in the First Amendment guarantees to our society, we have a special obligation to understand the morality of society and that of the Supreme Court, and to promote the development of both toward the ends of justice, the highest morality according to Kohlberg.

In this paper, we propose to do two things: First, to explicate Kohlbergian Theory of moral development; and second, to apply his theory to selected Supreme Court opinions dealing with the First Amendment issue of Obscenity. Our approach is premised on the observation by Lawrence Kohlberg that the United States Constitution and Supreme Court interpretations of it represent a high stage of moral reasoning.[3] It seems to us that one of the dominant moral concerns of contemporary

society concerns interpretations of the First Amendment's protection of the right of free speech and free press, particularly as treated with respect to obscenity.

KOHLBERG'S STAGE THEORY

For the past twenty years Dr. Kohlberg and his colleagues have studied moral reasoning in several cultures: the United States, Turkey, Taiwan, Mexico, and Malaysia.[4] The results of these studies provided the six stages of moral development that comprise the basis of Kohlberg's theory. His research also led him to conclude that moral reasoning develops in the same way across cultures; that is, the order of the stages indicates universal development in man's moral reasoning.

Dr. Kohlberg explains that the theoretical basis of the stages of moral reasoning he proposes is found in the works of Kant, Dewey, and Piaget.[5] The work of Piaget in the area of cognitive structuring of children's reasoning through the use of interviews and observation is most directly related to Kohlberg's work. Kohlberg says, "In 1955 I started to redefine and validate (through longitudinal and cross-cultural study) the Dewey-Piaget levels and stages."[6] Kohlberg now claims to have validated the stages[7] and indicates that the concept of stages implies three characteristics:

> 1. Stages are "structured wholes," or organized systems of thought. Individuals are <u>consistent</u> in level of moral judgment.
>
> 2. Stages form an <u>invariant sequence</u>. Under all conditions except extreme trauma, movement is always forward, never backward, Individuals never skip stages; movement is always to the next stage up.
>
> 3. Stages are "hierarchical integrations." Thinking at a higher stage includes or comprehends within it lower-stage thinking. There is a tendency to function at or prefer the highest stage available.[8]

Kohlberg's stage theory itself is divided into three levels. Within each level there are two stages, which provides six stages in all. We will consider the definitions of the levels first, then turn to the six stages.

Dr. Kohlberg has identified the three levels as preconventional, conventional, and postconventional. The person operating at the preconventional level responds to cultural labels of good and bad, and interprets these labels in terms of the physical consequences to himself or in terms of the physical power of those who establish the rules and labels of good and bad. Thus, at this level the person reasons in terms of punishment, reward, or the exchange of favors.

The second level, conventional, can be thought of as a conformist level, but Kohlberg indicates that this is perhaps too smug a term.[9] The individual at this level is concerned with maintaining the expectations and rules of his family, group, or nation for its own sake. The concern is with both conforming to the social order and maintaining, supporting, and justifying this order.

In the postconventional level, the individual's moral reasoning is based upon autonomous principles which have validity and application apart from the individual's identification with those persons or groups. At this level the individual reasons according to internalized principles which have validity for all persons across all ages and time periods.

Additional clarification of the moral levels postulated by Kohlberg comes from a view of the levels in terms of the

relationship between the self and society. Kohlberg explains:

> One way of understanding the three levels is to think of them as three different types of relationship between the self and society's rules and expectations. From this point of view, a person at the preconventional level is one for whom rules and social expectations are something external to the self. A conventional person has achieved a socially normative appreciation of the rules and expectations of others, especially authorities, and identifies with the occupants of social or societal role relationships. The principled (or postconventional) person has differentiated self from normative roles and defines values in terms of self-constructed reflective principles.[10]

As indicated earlier, within each of the three levels there are two stages. The first two stages occur at the preconventional level. Kohlberg explains these stages as follows:

> Stage 1: Orientation toward punishment and unquestioning deference to superior power. The physical consequences of action regardless of their human meaning or value determine its goodness or badness.
>
> Stage 2: Right action consists of that which instrumentally satisfies one's own needs and occasionally the needs of others. Human relations are viewed in terms like those of the marketplace. Elements of fairness, of reciprocity, and equal sharing are present, but they are always interpreted in a physical, pragmatic way. Reciprocity is a matter of you scratch my back and I'll scratch yours not of loyalty, gratitude, or justice.[11]

The third and fourth stages occur at the conventional level. Again Kohlberg explains:

> Stage 3: Good-boy--good-girl orientation. Good behavior is that which pleases or helps others and is approved by them. There is much

conformity to stereotypical images of what is majority or natural behavior. Behavior is often judged by intention--"he means well" becomes important for the first time, and is overused, as by Charlie Brown in Peanuts. One seeks approval by being "nice."

Stage 4: Orientation toward authority, fixed rules and the maintenance of the social order. Right behavior consists of doing one's duty, showing respect for authority and maintaining the given social order for its own sake. One earns respect by performing dutifully.[12]

The final two stages are found in the postconventional level. Kohlberg describes these stages as follows:

Stage 5: A social-contract orientation, generally with legalistic and utilitarian overtones. Right action tends to be defined in terms of general rights and in terms of standards which have been critically examined and agreed upon by the whole society. There is a clear awareness of the relativism of personal values and opinions and a corresponding emphasis upon procedural rules for reaching concensus. Aside from what is constitutionally and democratically agreed upon, right or wrong is a matter of personal "values" and "opinion." The result is an emphasis upon the 'legal point of view," but with an emphasis upon the possibility of changing the law in terms of rational considerations of social utility, rather than freezing it in the terms of Stage 4 "law and order." Outside the legal realm, free agreement and contract are the binding elements of obligation. This is the official morality of the American government, and finds its ground in the thought of the writers of the Constitution.

Stage 6: Orientation toward the decisions of conscience and toward self-chosen ethical principles appealing to logical conprehensiveness, universality, and consistency. These principles are abstract and ethical (the Golden Rule, the categorical imperative); they are not concrete moral rules like the Ten Commandments. Instead, they are universal principles of justice, of the reciprocity and equality of human rights, and of respect for the dignity of human beings as individual persons.[13]

Kohlberg's studies are based on a series of interviews with student and adult subjects regarding their responses to

a series of moral dilemmas the researcher poses to them. An important feature of Kohlberg's work concerns the stress upon the moral reasoning employed by the subject. There are no necessarily right or wrong answers to the dilemmas; rather the researcher codes the statements of reasoning employed. The reader may be helped in his/her understanding of the stages by having an opportunity to see how subjects' responses are coded by Kohlberg.

The most frequently cited of Kohlberg's dilemmas is the case of Heinz. The story appears below:

> In Europe, a woman was near death from cancer. One drug might save her, a form of radium that a druggist in the same town had recently discovered. The druggist was charging $2,000, ten times what the drug cost him to make. The sick woman's husband, Heinz, went to everyone he knew to borrow the money, but he could only get together about half of what it cost. He told the druggist that his wife was dying and asked him to sell it cheaper or let him pay later. But the druggist said, 'no'. The husband got desperate and broke into the man's store to steal the drug for his wife. Should the husband have done that? Why?[14]

The answer to the question "should the husband have done that?" is not what is important to Kohlberg. Rather, the answers to "why" and to additional probing questions the researcher uses will determine at what level of moral reasoning the subject is operating. Examples of pro and con responses at each stage will help to clarify this point.

Stage 1: Punishment and obedience orientation.

Pro: It isn't really bad to take it--he did ask to pay for it first. He wouldn't do any other damage or take anything else and the drug he'd take is only worth $200, he's not really taking a $2,000 drug.

Con: Heinz doesn't have any permission to take the drug. He can't just go and break through a window

> or break the door down. He'd be a bad criminal doing all that damage. That drug is worth a lot of money and stealing anything so expensive would really be a big crime.[15]

Both of these examples are silent as to Heinz's intentions. Nor do they consider any obligation to his wife. The statements judge the crime in terms of the consequences of Heinz's action.

Stage 2: Instrumental relativist orientation.

> Pro: Heinz isn't really doing any harm to the druggist, and he can always pay him back. If he doesn't want to lose his wife, he should take the drug because it's the only thing that will work.
>
> Con: The druggist isn't wrong or bad, he just wants to make a profit like everyone else. That's what you're in business for, to make money. Business is business.[16]

At Stage 2 the intentions are very much in evidence. The pro statement mentions an intention to pay the druggist back, and the con statement shifts to the druggist's position indicating that the druggist is just like everyone else in wanting to make a profit. The hedonism contained in the pro statement is quite egoistic in suggesting that Heinz should commit the crime only "If he doesn't want to lose his wife." There is no concern shown for the wife. If Heinz does want to lose her, or if he doesn't care that much, it's a tough break for the wife.

Stage 3: Interpersonal concordance.

> Pro: Stealing is bad but this is a bad situation. Heinz isn't doing wrong in trying to save his wife; he has no choice but to take the drug. He is only doing something that is natural for a good husband to do. You can't blame him for doing something out of love for his wife. You'd blame him if he didn't love his wife enough to save her.

> Con: If Heinz's wife dies he can't be blamed in these circumstances. You can't say he is a heartless husband just because he won't commit a crime. the druggist is the selfish and heartless one in this situation. Heinz tried to do everything he really could.[17]

Now both answers are clearly fully involved in the parties' intentions. The answers discuss who can be approved of and who cannot be approved of by measuring their intentions. Both answers find Heinz blameless, but the con statement in addition shifts the blame to the druggist.

Stage 4: Law and order orientation.

> Pro: The druggist is leading a wrong kind of life if he just lets somebody die. You can't let somebody die like that, so it's Heinz's duty to save her. But Heinz can't just go around breaking laws and let it go at that--he must pay the druggist back and he must take his punishment for stealing.
>
> Con: It's a natural thing for Heinz to want to save his wife, but it's still always wrong to steal. You have to follow the rules regardless of how you feel or regardless of the specific circumstances.[18]

Here the statements consider intentions but add to that some perceptions of a natural law. Nonetheless, both the pro and the con statements eventually arrive at the conclusion that the obligation to obey the law overrides any "natural" inclinations Heinz may have.

Stage 5: Social contract orientation.

> Pro: Before you say stealing is wrong you've got to really think about this whole situation. Of course the laws are quite clear about breaking into a store. And even worse, Heinz would know there were no legal grounds for his action. Yet, I can see why it would be reasonable for anybody in this kind of situation to steal the drug.
>
> Con: I can see the good that would come from illegally taking the drug, but the ends don't

> justify the means. You can often find a good action behind illegal action. You can't say heinz would be completely wrong to steal the drug, but even these circumstances don't make it right.[19]

The Stage 5 statements demonstrate a more complex decision-making process. Here we find that for both sides neither good intentions alone nor the law alone is sufficient to guide action. There is a recognition that while the law cannot be ignored it is clearly unjust in this situation. The feeling seems to be that a better solution for these respondents would be to change the law, but since it has not been changed they find it difficult to either approve or disapprove of Heinz. Perhaps they would favor changing the law according to established procedures.

Stage 6: Universal ethical principle orientation.

> Pro: Where the choice must be made between disobeying the law and saving a human life, the higher principle of preserving life makes it morally right--not just understandable--to steal the drug.
>
> Con: There are so many cases of cancer today that with any new drug cure, I'd assume that the drug would be scarce and that there wouldn't be enough to go around to everybody. The right course of action can only be the one which is consistent to all people concerned. Heinz ought to act, not according to what is legal in this case, but according to what he conceives an ideally just person would do in this situation.[20]

At the Stage 6 level of reasoning, both answers are quick to affirm the position that the law may be disobeyed if a higher principle is involved. The position taken is justified on the basis of a universal principle which everyone can live by no matter what role they will be called upon to play. Notice that the special relationship between husband and wife gives

way at this stage to an even more important consideration of the supremacy of life over property.

With the foregoing discussion in mind, the reader is directed to Table 1 which provides the definition of the moral stages within each level. The Table provides an easy guide to the use of Kohlberg's moral stages as a ready reference for the scholar/critic in applying this theory to his rhetorical analysis.

----------Table 1 inserted here----------

Kohlberg's research has led him to conclude that preconventional moral reasoning is the level of most children under the age of nine. Some adolescents also reason at this level. Further, more recent studies have led him to place many criminal offenders' reasoning, both adolescent and adult, at this level. Most adolescents and adults in our society and other cultures operate at the conventional level. The postconventional level is attained by only a minority of adults and is generally not reached until after age twenty.[21] Kohlberg points out that "almost all individuals manifest more than 50 percent of responses at a single stage with the rest of the responses at adjacent stages."[22]

In his discussion of Kohlberg's moral stages, Jack R. Fraenkel points out Kohlberg's belief "that the six stages are universal, hold true in all cultures, and that each stage represents a level of reasoning higher than the one immediately preceding it."[23] Kohlberg states, "We claim . . . that each higher stage of reasoning is a more adequate way of resolving moral problems judged by moral-philosophic criteria."[24] In

terms of the focus of Kohlberg's studies, one of the more important findings is that children and adults prefer the nighest level of moral reasoning that they can understand. They tend to reject the arguments based at lower stages as too simplistic and sometimes naive, but Kohlberg and Turiel determined that they usually cannot understand arguments based on reasoning more than one stage above their own.[25]

APPLICATION TO SUPREME COURT DECISIONS

As mentioned earlier, Kohlberg indicates that the United States is something of an anomoly since it is the only country in history to have begun at Stage 5 without the necessity of progressing through all the lower stages. Even though the majority of U.S. citizens at the time the constitution was drafted were reasoning at Stage 4 or lower, the framers themselves reasoned at Stage 5 and produced a Stage 5 document. No other country has had such an auspicious beginning, but the reason this was possible is undoubtedly due to the European heritage of our founders and the fact that those societies had proceded through the normal developing stages, thus, the United States did not have to progress on its own but could begin at a point or slightly above the point of the Europeans.

Kohlberg states that not only is the Constitution a Stage 5 document, but that the Supreme Court interpretations of it are likewise representative of Stage 5 reasoning. Kohlberg's position on the Supreme Court's reasoning provides the basis for the research question posed in this study: Are the majority of the Supreme Court reasons on obscenity cases at Stage 5?

A. Method.

The authors served as coders for this study. The first step in our self-training process was to read as widely as possible into the literature relative to Kohlberg's Moral Stages Theory. We then discussed our understanding of the various stages and tested each other with sample arguments.

The next step was to decide what cases to study. We turned to the first volume of the Media Law Reports and selected four cases in that volume which dealt with the issue of obscenity. The first volume was used because that volume covers relevant cases over a number of years. Thus, we could get a greater time-span included in the relatively few numbers of cases. The cases chosen were Roth v United States (1 MLR 1375, 1957), Ginzburg v United States (1 MLR 1409, 1966), Ginzburg v New York (1 MLR 1424, 1968), and Miller v California (1 MLR 1441, 1973). We analyzed all opinions for each case.

In analyzing the cases, we first read through the opinions marking the arguments that we felt should be analyzed because they represented reasons the author used in justifying his position on the issue. That is, statements relating to the facts of the case were not considered. We then separately considered the statements of reasoning and indicated the stage of moral development reflected by the reasoning. Each coder worked with his own copy of the cases and made his own independent scoring decisions.

At this point we should inject our disclaimer. We recognize that this is a preliminary study. We did not apply statistical tests to determine the exact correlation of coder agreement to provide an indicator of reliability. We believe

continued study and additional samples are necessary to establish coder reliability, however, we did arrive at an impressive percentage of agreemant, which we feel justifies continuing this study. The percentage of coder agreement is illustrated in Table 2.

By way of explanation, the term "decisions" refers to the number of arguments we scored. "Agree" indicates those arguments on which both coders agreed as to the Stage of reaoning represented by a particular argument. "Disagree" represents those arguments for which the coders each indicated a different stage. "Mixed" refers to arguments which either or both coders indicated uncertainty as to which of two stages the argument would properly fit. This means that there were a few arguments coded which seemed to have elements of two stages or which appeared to be somewhere between two stages. As a preliminary or "pilot" type study, we were, nonetheless, pleased with the 72 percent agreement figure. When the number of "mixed" decisions is dropped from the table, the percentage of agreement rises to 86 percent. The rationale for dropping the "mixed" category is that the "mixed" decisions do not represent disagreements necessarily, but rather show agreed uncertainty. Frequently both coders agreed as to the two stages involved in the 'mixed' decisions. Perhaps the most revealing figure concerning coder reliability is the relatively low 12 percent disagreement shown on the table.

After we had completed our independent scoring of the arguments and tabulated the agreements and disagreements, we discussed our areas of disagreement. One point from that

discussion is particularly worth noting. When the members of the Court referred to certain legal terms or included those terms as part of the reasoning in an argument, such as "due process of law", one of the authors scored these statements as Stage 4 on the basis that due process is part of the existing legal structure and thus falls into the Stage 4 "law and order" category. The other author viewed "due process" as a concept or principle, and accordingly scored it as Stage 5 "legalistic orientation." The point here is that the coders did not disagree over the understanding of the stages, rather it was a difference of interpretation regarding the legal concept. When the different interpretations were revealed, both of the coders could agree into which stage that interpretation would fall.

B. Results.

Kohlberg reports that an individual is said to reason at a particular stage when 50 percent or more of his moral reasoning statements can be classified at that stage. As stated earlier in this paper, Kohlberg has also claimed that the Supreme Court reasons at Stage 5. This statement led to the hypothesis which stimulated the present study: The majority of the moral reasons presented in Supreme Court opinions will be at Stage 5 of Kohlberg's Theory of Moral Development. The information presented in Table 3 reveals the extent of the support the authors found for this hypothesis. Of the 98 decisions upon which the coders agreed, 61 or 62 percent were at Stage 5, as predicted.

---------- Insert Table 3 here ----------

The next most frequent Stage of Moral Reasoning was Stage 4 with 31 statements representing 32 percent. This result is probably not too surprising in view of Kohlberg's indication that the majority of adults in all the cultures he has studied, including the United States, reason at Stage 4.

There were only two examples of Stage 6 reasoning found in the four cases considered in this study. The two instances of stage 6 reasoning appeared in a dissenting opinion in the Ginzburg v United States case, and the same argument was used in a dissenting opinion in the case of Miller v California. In essence, then, while the argument is used in two separate decisions by two separate Justices, it is the same argument. The Stage 6 argument was that upholding a conviction was unjust when neither the defendant nor anyone else could have known that the material distributed was obscene. The question for both of these justices was not ignorance of an obscenity statute, which the courts have long ruled is no defense, but rather that there was no way to know that the publication in question was obscene according to the legal definition, and hence upholding the conviction would be a miscarriage of Justice. This qualifies as Stage 6 reasoning under Kohlber's definition because the argument would apply to all men, at all times, and because the principle involved is Justice, which Kohlberg believes to be the highest moral principle.

C. Discussion.

The authors readily agree that the sample size was small, and consequently no effort has yet been made to subject the data to appropriate statistical measures. We hope to be

able to add other cases both in the area of obscenity and in other First Amendment issues. However, the results obtained in this "pilot" study do, we believe, indicate a potential for meaningful scholarship into the quality of reasoning applied in First Amendment decisions.

We believe there are several areas for continued research using Kohlberg's Stages as Content Analytic tools. This approach could provide useful knowledge of the nature of Supreme Court reasoning over a number of years. It could provide data upon which comparisons of various courts and their reasoning can be quantified; for example, a comparison of the stages of reasoning employed by the Warren Court as opposed to the Burger Court. Comparisons of various Justice's reasoning could also be done using this approach. It can also be applied across different issues. Conceivably, such an analyasis of Justice's decisions while serving as lower court Justices could be used to help determine the best qualified candidates for appointment to the high court when vacancies occur. The Kohlbergian system also presents a myriad of opportunities outside the legal realm as well.

CONCLUSION

We have presented an introduction to Lawrence Kohlberg's Theory of Moral Stage Development and demonstrated how that theory can be applied as a content analytic tool to the analysis of Supreme Court decisions. We have also indicated several areas for further investigation using the Kohlberg system. It is our hope that other scholars will share our interest in the application of Kohlberg's Stages of Moral Reasoning and

will pursue some of the research areas we have suggested or perhaps apply Kohlberg's Stages to their own research interests.

While we do believe there is considerable scholarly potential in a Kohlbergian analysis, we would be remiss if we did not conclude with a word of caution. Dr. Kohlberg has provided some sage advice regarding the extent to which conclusions should be drawn based upon a knowledge of moral stages of reasoning.

> Knowing that someone's thinking is moral stage 2 is not to say that that person does not think or act morally; it is to recognize his sense of right and fairness as stage 2. To understand a person's stage 2 reasoning helps us to understand his point of view, to put ourselves in that person's place and see the world through his eyes. We sometimes label the stage 2 way of thinking "instrumental egoism," but this does not mean that stage 2 individuals care nothing for other people or have no sense of fairness. It means, rather, that their concern for others is limited by the notion that people basically have to look out for themselves in this world, so that good relations are based on trade-offs.[26]

So we need to be careful of the labels we are tempted to place on people or their reasoning once we have been able to relate it to Kohlberg's stages. But with that caution in mind, the approach still seems to be capable of providing a great deal of understanding to scholars and critics.

Table 1. Definition of Moral Stages

1. Preconventional level

At this level, the child is responsive to cultural rules and labels of good and bad, right or wrong, but interprets these labels either in terms of the physical or the hedonistic consequences of action (punishment, reward, exchange of favors) or in terms of the physical power of those who enunciate the rules and labels. The level is divided into the following two stages:

Stage 1: The punishment and obedience orientation. The physical consequences of action determine its goodness or badness, regardless of the human meaning or value of these consequences. Avoidance of punishment and unquestioning deference to power are valued in their own right, not in terms of respect for an underlying moral order supported by punishment and authority (the latter being Stage 4).

Stage 2: The instrumental-relativist orientation. Right action consists of that which instrumentally satisfies one's own needs and occasionally the needs of others. Human relations are viewed in terms like those of the marketplace. Elements of fairness, of reciprocity, and of equal sharing are present, but they are always interpreted in a physical, pragmatic way. Reciprocity is a matter of "you scratch my back and I'll scratch yours," not of loyalty, gratitude, or justice.

II. Conventional level

At this level, maintaining the expectations of the individual's family, group, or nation is perceived as valuable in its own right, regardless of immediate and obvious consequences. The attitude is not only one of conformity to personal expectations and social order, but of loyalty to it, of actively maintaining, supporting, and justifying the order, and of identifying with the persons or group involved in it. At this level, there are the following two stages:

Stage 3: The interpersonal concordance or "good boy - nice girl" orientation. Good behavior is that which pleases or helps others and is approved by them. There is much conformity to stereotypical images of what is majority or "natural" behavior. Behavior is frequently judged by intention - "he means well" becomes important for the first time. One earns approval by being "nice."

Stage 4: The "law and order" orientation. There is orientation toward authority, fixed rules and the maintenance of the social order. Right behavior consists of doing one's duty, showing respect for authority, and maintaining the given social order for its own sake.

III. Postconventional, autonomous, or principled level

At this level, there is a clear effort to define moral values and principles that have validity and application apart from the authority of the groups or persons holding these principles and apart from the individual's own identification with these groups. This level also has two stages

Stage 5: The social-contract, legalistic orientation, generally with utilitarian overtones. Right action tends to be defined in terms of general individual rights and standards which have been critically examined and agreed upon by the whole society. There is a clear awareness of the relativism of personal values and opinions and corresponding emphasis upon procedural rules for reaching consensus. Aside from what is constitutionally and democratically agreed upon, the right is a matter of personal "values" and "opinions." The result is an emphasis upon the rational considerations of social utility (rather than freezing it in terms of Stage 4 "law and order"). Outside the legal realm, free agreement and contract is the binding element of obligation. This is the "official" morality of the American government and constitution.

Stage 6: The universal-ethical-principle orientation. Right is defined by the decision of conscience in accord with self-chosen ethical principles appealing to logical comprehensiveness, universality, and consistency. These principles are abstract and ethical (the Golden Rule, the categorical imperative): they are not concrete moral rules like the Ten Commandments. At heart, these are universal principles of justice, of the reciprocity and equality of human rights and of respect for the dignity of human beings as individual persons ("From is to Ought," pp. 164, 165).

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TABLE 2. CODER DECISIONS BY CASE.

	Roth	Ginz. v U.S.	Ginz. v N.Y.	Miller	Total	Percent
Decisions	37	36	21	42	136	100
Agree	28	28	11	31	98	72
Disagree	5	4	4	3	16	12
Mixed	4	4	6	8	22	16

TABLE 3. CODER AGREEMENTS BY STAGE AND CASE

	Roth	Ginz. v U.S.	Ginz. v N.Y.	Miller	Total	Percent
Stage 2		1			1	1
Stage 3	1	2			3	3
Stage 4	14	8	4	5	31	32
Stage 5	13	16	7	25	61	62
Stage 6		1		1	2	2
Total	28	28	11	31	98	100

NOTES

[1]Dr. Lawrence Kohlberg is currently the Director of Harvard's Center for Moral Education.

[2]June L. Tapp and L. Kohlberg, "Developing Senses of Law and Legal Justice," Journal of Social Issues, 27 (Spring, 1971) p. 88.

[3]Lawrence Kohlberg, "Education for Justice: A Modern Statement of the Platonic View," in N. F. and T. R. Sizer (Ed.'s) Moral Education: Five Lectures (Cambridge: Harvard University Press, 1970) p. 74.

[4]Jack R. Fraenkel, How to Teach About Values (Englewood Cliffs, New Jersey: Prentice-Hall, Inc., 1977) p. 55.

[5]Lawrence Kohlberg, "The Claim to Moral Adequacy of a Highest Stage of Moral Development," Journal of Philosophy, 70 (October, 1973) p. 633. See also, Kohlberg, "The Concepts of Developmental Psychology as the Central Guide to Education: Examples from Cognitive, Moral, and Psychological Education," in Peter Scharf (Ed.) Moral and Psychological Education: Theory and Research (R F Publishing, Inc., 1976) p. 6.

[6]Lawrence Kohlberg, "The Cognitive-Developmental Approach to Moral Education," Phi Delta Kappan, 56 (June, 1975) p. 670.

[7]Ibid.

[8]Ibid.

[9]Lawrence Kohlberg, "The Child as Moral Philosopher," Psychology Today, 2 (September, 1968) p. 26.

[10]John Gibbs, L. Kohlberg, A. Colby, and B. Speicher-Dubin, "The Domain and Development of Moral Judgment: A Theory and a Method of Assessment," in J. R. Meyer (Ed.) Reflections on Values Education (Waterloo, Ont.: Wilfrid Laurier University Press, 1976) p. 22.

[11]Ibid.

[12]Ibid.

[13]Ibid.

[14]Fraenkel, p. 57.

[15]Roger Brown and R. J. Herrnstein, Psychology (Boston: Little, Brown and Co., 1975) p. 313.

[16]Ibid.

[17]Ibid.

[18]Ibid.

[19]Ibid. pp. 313-314.

[20]Ibid. p. 314.

[21]Lawrence Kohlberg, "Moral Stages and Moralization: The Cognitive-Developmental Approach," in T. Lickona (Ed.) Moral Development and Behavior: Theory, Research and Social Issues (New York: Holt, Rinehart and Winston, Inc., 1976) p. 33.

[22]Ibid. p. 47.

[23]Fraenkel, p. 59.

[24]Kohlberg, "Moral Stages and Moralization," p. 46.

[25]Fraenkel, p. 60.

[26]Gibbs, et. al. p. 41.